

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2002-192-E - ORDER NO. 2003-731
DECEMBER 31, 2003

IN RE: South Carolina Electric & Gas Company,)	ORDER DENYING
)	PETITION FOR
Complainant,)	RECONSIDERATION BY
)	SOUTH CAROLINA
vs.)	ELECTRIC & GAS
)	
Palmetto Electric Cooperative, Inc.,)	
)	
Respondent.)	

This matter comes before the Public Service Commission of South Carolina (the "Commission") on a Petition filed by South Carolina Electric & Gas Company ("SCE&G") for the Commission's reconsideration of Commission Order No. 2003-635. In Order No. 2003-635 the Commission dismissed SCE&G's Complaint filed in Docket 2002-192-E that Palmetto Electric Cooperative, Inc. ("Palmetto" or the "Coop.") was not entitled to provide service to an industrial electrical customer, referred to herein as "Walsh" or "the Walsh facility", and that Walsh was required to take service from SCE&G.

In its Petition for Reconsideration, SCE&G makes six arguments: (1) that the Commission erred in failing to find and conclude that Palmetto's service to the Walsh facility violates the Territorial Assignment Act; (2) that the Commission erred by failing to find and conclude that the "A" Sheets are the only reliable evidence of which electrical

service lines existed as of July 1, 1969; (3) that the Commission erred by not finding that Palmetto had constructed a new line on which Palmetto attempted to assert new corridor rights in SCE&G's assigned territory; (4) that the Commission erred in failing to find and conclude that Palmetto violated the provisions of S.C. Code of Regulations Sec. 103-304; (5) that the Commission erred by applying the law of reformation of contracts; and, (6) that the Commission erred by failing to find and conclude that, even if the law of reformation applies, the equitable Doctrine of Latches precludes Palmetto's claim.

As to the first four of these arguments, these issues were previously argued by the parties and addressed in Commission Order No. 2003-635, and we find that there is ample evidence contained in the record to support the Commission's findings and conclusions regarding these issues. There is nothing contained in the SCE&G Petition which convinces the Commission that there was any error of fact or law in the consideration of, and weight given, to the evidence of the pre-existing Palmetto service line (the "Addie Graham Line") or the SCE&G "A Map." Neither is there anything contained in SCE&G's arguments for reconsideration of these four issues which convinces the Commission that there was any error in its previous Order regarding these issues.

Further, the Commission finds that SCE&G's arguments contending that the Commission improperly applied the law of reformation of contract and that the equitable Doctrine of Latches precludes Palmetto's claim are groundless. As to the reformation of contract issue, the Commission finds that this argument is misplaced as we found in Order No. 2003-635 that the A Map did NOT form a contract. As there was never a

contract between the parties, there was no reformation of contract in the Commission's Order. Second, the issue of the Doctrine of Latches was never raised before this Commission in the prehearing pleadings or during the hearing on this matter. The legal argument on this point is therefore not a part of the record in this case and is therefore improperly raised for the first time by SCE&G in its Petition for Reconsideration. See, Watson v. Suggs, 313 S.C. 291, 437 S.E.2d 172 (Ct. App. 1993) (only matters raised in the pleadings may be considered upon the trial of the case); Indigo Associates v. Ryan Inc. Co., 314 S.C. 502, 431 S.E.2d 271 (1993) (one cannot present and try his case on one theory and then advocate another on appeal). However, even if the issue of Latches was properly before the Commission at this time, we would find that it is inapplicable. The Commission can find nothing in the record of this case to establish that Palmetto had any knowledge that the A Map in SCE&G's possession was in error or that there was any dispute between Palmetto and SCE&G regarding the territory at issue in this matter until the current dispute arose.

In conclusion, the Commission finds that the facts in the record in this case and the applicable statutes and regulations support the Commission's findings and conclusions. Specifically, the greater weight of the evidence in this matter shows that Palmetto's Addie Graham line, from which the 300-foot corridor was measured to provide service to the Walsh Facility, was in service prior to territorial assignment and that the SCE&G A Map was incorrect.

As noted in Order No. 2003-635, and contrary to SCE&G's alleged error, the "A" maps are not the only evidence in the record in this case regarding the service area in

question. Specifically, Palmetto presented at the hearing competent, reliable, and substantial evidence, which is a part of the record in this case, that the Walsh Facility is located within 300 feet of the Addie Graham Line and that this service line existed as of July 1, 1969. This evidence supports the Commission's factual findings and legal conclusions that Palmetto is properly servicing the Walsh Facility. Commission Order No. 2003-635, pgs. 5-6.

For these reasons, the Commission denies the Petition for Reconsideration and reaffirms its findings and conclusions as set forth in Commission Order No. 2003-635.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Mignon L. Clyburn, Chairman

ATTEST:


Bruce F. Duke, Deputy Executive Director

(SEAL)